REMARKS

In the Action, claims 1-32 are pending. Claims 17-27 are withdrawn from consideration. Claims 1-16 and 28-32 are rejected. Applicants respectfully request reconsideration of the claims of this application in light of the remarks presented herein.

Claims 1, 8-9, and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US 5,439,694 ("Morris, Jr.") in view of US 3,620,766 ("Wallace"), US 3,052,559 ("Peebles"), and US 4,782,643 ("Stark").

Morris, Jr. discloses a steam chamber for preheating and sterilizing exposed surfaces of animal carcasses immediately following slaughter and evisceration. The chamber 20 is provided with rubber doors 34 covering end openings 22, 24. The chamber is injected with steam through steam line 36 and condensate is removed through drain line 32. Animal carcasses are suspended from a conveyer line 26 and multiple carcasses are passed through the chamber for preheating and sterilization.

Wallace discloses a method for producing skinless wieners. Ground meat is pumped into a cellulose casing or tubing 16, which is subsequently fed through a tying machine 18 which ties the casing into individual uncured wiener sections 20 which remain connected in a continuous-end-to-end relationship throughout the subsequent processing steps. During processing, steps may include the spraying of acid within a spray hood 44 and the spraying of steam from spray nozzles 32 on the surface of the cellulose. The wieners remain in the cellulose casing throughout the processing steps until fed through a peeling machine 40 which removes the cellulose casing and leaving the individual wiener products 42. Thus, the outer surface of the wieners are not directly contacted.

Peebles discloses a sterilization process for viscous and paste-like food products. The disclosed process includes pumping the food product into a pliable, plastic container 11. The containers are then passed through a series of rollers, (*e.g.* 20, 28, 29, etc.) to cause circulation of the food product contained therein while the containers are passed through a housing

having sterilizing 18A and cooling 18B sections. The food product is not contacted in the sterilization section.

Stark discloses an arrangement for heat treatment and packaging of a liquid product. The disclosure includes pumping the liquid product 6 into a tube of flexible material 3 which is then fed further into the arrangement through the use of a peristaltic pumping device 5. The shape of the tube is further dictated by the presence of steel bands 1 that aid in moving the tubing through the arrangement. As the tube containing the liquid product is passed through the arrangement, heat is generated in heating zones 50, for example by using induction coils 12 to induce eddy currents in the steel bands 1, which subsequently transfer heat by convection to the tube 3 and ultimately the liquid therein (Col. 10, lines 2-11). Similarly, ducts or loops 35 can be formed around the band 1 and are used to carry a heated liquid medium to supply heat to the bands 1 and by convection to the tube 3 and liquid 6 contained therein.

With respect to claim 1, and claims 8-9 and 11 dependent therefrom, the applied references fail to disclose passing a food product through a steam sleeve, the food product having a length greater than the length of the steam sleeve, and contacting the outer surface of the food product with a flow of steam for treatment of the food product.

Regarding the cited references, the Office Action states, "Since the art taken as a whole teaches that it was conventional to continuously treat the outer surface of a food product such that the food product blocks both the entrance and exit of the treatment zone, the particular food product treated would have been an obvious matter of choice and/or design to one having ordinary skill in the art at the time the invention was made (Office Action, page 4).

"[R]ejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1396 (2007) quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006); MPEP 2142. Without an articulated objective reason to combine the teachings of references, a

mere statement that the claimed invention is within the capabilities of one of ordinary skill in the art is insufficient to establish a *prima facie* case of obviousness. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993); MPEP 2143.01. Because the Office Action lacks an explanation why the asserted modification would have been obvious, a *prima facie* showing of obviousness has not been made.

Furthermore, it is respectfully asserted that the Morris, Jr. reference teaches away from combination with the other applied references and vice versa. It is improper to combine references where the references teach away from their proposed combination. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983) MPEP 2145 X.D.2.

Morris, Jr. teaches that the individual carcasses are to be spaced at intervals along a conveyer line (Col. 3, lines 8-10) following slaughter and evisceration and that the carcasses are to remain in the steam chamber for a predetermined length of time before being moved out of the chamber (claims 1 and 3). Therefore, it would go against the disclosure of Morris, Jr. to have a carcass simultaneously extend beyond both the entrance and exit of the steam chamber as the dwelling time in the chamber would be required to ensure that the steam would contact all of the surfaces. This is apparent from the length of the apparatus of Morris, Jr. which is many times longer than the carcasses.

The remaining references disclose the exterior surfaces of containers (as described above in regard to the Wallace, Peebles, and Stark references) being contacted by steam. The heat applied to the container is then transferred through the container to the product contained therein. The individual products of these references do not have the structural integrity to be contacted directly on their surface by steam and therefore these references teach away from directly contacting the surface of the product with steam.

Claims 2, 28-29, and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Morris, Jr., Wallace, Peebles, and Stark, and in further view of US 3,005,716 ("Moreland").

With regard to claim 2, the combined applied references fail to disclose a method of treating the outer surface of a food product wherein "generating the flow of steam in the

steam sleeve while the food product is passing therethrough includes the step of circulating the flow of steam in the steam sleeve within an inwardly open channel formed in the interior wall of the sleeve" as recited in claim 2.

The Office Action asserts that the Moreland reference teaches an inwardly open channel (Figure 3, item 43) through which a treatment fluid passes (Column 2, lines 53-59) for the purpose of treating the surface of the article that comes into contact with the treatment fluid (Office Action, page 6). It is respectfully submitted that item 43 is neither inwardly open nor does the treatment fluid contained therein contact the surface of an article to be treated. Rather, the volume of groove 43 disclosed by Moreland is delimited by the exterior surface of the stationary tube 19. Further, heated liquid can then be circulated in this space to heat the external surface of the tube 19. Therefore, the groove 43 is not inwardly open to a steam sleeve and the surface of the sausage emulsion contained within the interior surface of the tube 19 is not contacted by the heated liquid.

With regard to claim 28, the proposed combination fails to disclose a method of treating an outer surface of a food product, the method comprising "generating the flow of steam in the steam sleeve and circulating the flow of steam in the steam sleeve within a channel formed in the interior wall of the sleeve, the channel having an inlet for introduction of the steam into the sleeve and an outlet for removal of the steam and condensate from the sleeve, the channel inwardly open to an interior of the sleeve while the food product is passing therethrough, the flow of steam contacting the outer surface of the food product for treatment of the outer surface of the food product" as presently recited in claim 28.

For all of the reasons discussed above in regard to claims 1 and 2, it is respectfully submitted that claim 28 is not obvious over the applied references. In view of the above comments as they apply to claims 1, 2 and 28, it is respectfully submitted that claims 29 and 32, dependent from claim 28 are allowable as well.

Claims 3-7, 10, 12-16, 30, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Morris, Jr., Wallace, Peebles, Stark, and Moreland, and in further view of

US 5,711,981 ("Wilson et al."), US 2,919,639 ("Cronin"), US 2,682,827 ("Gressly"), and US 2,909,985 ("Abrams"). The Applicants respectfully traverse this rejection.

In view of the above comments as they apply to claims 1, 2 and 28, it is respectfully submitted that claims 3-7, 10, and 12-16, dependent from claim 2, and claims 30 and 31 dependent from claim 28 are allowable as well.

Claims 28-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilson et al. in view of Moreland.

With regard to claim 28, the proposed combination fails to disclose a method of treating an outer surface of a food product, the method comprising "generating the flow of steam in the steam sleeve and circulating the flow of steam in the steam sleeve within a channel formed in the interior wall of the sleeve, the channel having an inlet for introduction of the steam into the sleeve and an outlet for removal of the steam and condensate from the sleeve, the channel inwardly open to an interior of the sleeve while the food product is passing therethrough, the flow of steam contacting the outer surface of the food product for treatment of the outer surface of the food product" as presently recited in claim 28.

The Office Action admits that Wilson fails to disclose the particular structure of the channel as recited in claim 28 and then details the missing portions of the structure as including "the channel inwardly open to an interior of the sleeve while the food product is passing there through" (Office Action, page 14).

It is respectfully submitted that, as discussed above, Moreland fails to provide this missing structure. As all of the recited structures are not disclosed in the cited references, it is respectfully submitted that claim 28 is not obvious and the Applicants respectfully request that this rejection be withdrawn.

In view of the above comments as they apply to claim 28, it is respectfully submitted that claims 29-31, dependent therefrom, are allowable as well.

For all of the reasons mentioned above, the Applicants respectfully request reconsideration and allowance of all pending claims.

The Commissioner is hereby authorized to charge any additional fees which may be required with respect to this communication, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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